HIS MAJESTY THE KING..............PLAINTIFF;

vs.

ERNEST POWERS ....DEFENDANT;

1923
March 24.

Constitutional Law—Power of Dominion Crown to exempt its property from the requirements of Provincial Law—Soldier Settlement Act—Sections 33 and 34 of 9-10 Geo. V, ch. 71.

Held that sections 33 and 34 of the Soldier Settlement Act providing that, in the absence of the Board's consent thereto, livestock sold to a settler by the Board, so long as any part of the sale price remains unpaid, is exempt from the provisions of any provincial law requiring the registration of deeds, judgments, bills of sale, etc., affecting the transfer, etc., of like property, and that the same cannot be, voluntarily or involuntarily, alienated or encumbered to the prejudice of the Board's claim thereon, are *intra vires* of the Dominion Crown.

2. That any one dealing with a settler under the Board was put upon his inquiry, and did so at his own risk and peril.

INFORMATION of the Attorney-General of Canada to recover a certain horse or its value from the defendant who had bought the same from a settler under the Soldier Settlement Act, and which was part security for the advance made by the Crown to the settler.

January 23rd, 1923.

Case now heard before the Honourable Mr. Justice Audette at St. Thomas, Ont.

T. D. Leonard for plaintiff.

W. H. Barnum for defendant.

The facts of the case are stated in the reasons for judgment.

AUDETTE J. now (March 24, 1923) delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby the Crown claims the return of a grey percheron gelding, or the value thereof and damages for detention of the same. It is contended that the defendant wrongfully obtained possession of this gelding owned by the Soldier Settlement Board (9-10 Geo. V, ch. 71) from one Ernest S. Walker, a settler under the Act, and that upon demand he has refused and failed to deliver possession of the animal to the plaintiff or the Soldier Settlement Board.

The evidence discloses a long chain of minute facts, but, freed from all unnecessary details, it appears that Walker had at the origin a grey percheron gelding which,

1923
THE KING
v.
POWERS.
Audette J.

with other chattels, all subject to the Crown's lien, he had disposed of, contrary to the Act, having also run behind in his payment on the land. This grey percheron gelding, falsely stated to have been mired, was actually disposed of by Walker and found missing by some officials of the Board.

In March, 1919, Walker bought, with his own money, two grey percheron geldings, three years old. He bought one from Close and one from Percy. In March, 1920, the gelding bought from Percy died of distemper.

On 1st December, 1920 (exhibit No. 11), Walker wrote to the Soldier Settlement Board sending them, at their request, information as to his stock, and he then showed only one percheron gelding rising five which he valued at $170. Obviously that gelding was the one he purchased from Close and which he had called "Mark."

On the 17th December, 1920, he therefore executed a purchasing order, exhibit No. 3, whereby he turned over "Mark" to the Board as further security to cover the stock he had disposed of contrary to law and contrary to his own agreement with the Board—a bill of sale by way of security. In virtue of this new document the percheron gelding rising five years,—which is therein valued at $160 —became the property of the Crown. An order to repossess was subsequently issued, exhibit No. 7. This percheron gelding is obviously "Mark," the one he had purchased in 1919 from Close.

Walker, in his testimony, further stated that between December, 1920, and haying time in 1921,—that is latter end of June—he did not purchase any percheron gelding and at that date he bartered or sold this very gelding called "Mark" to the defendant Powers.

Powers in turn traded "Mark" to one Bonsor. But when the officers of the Board, accompanied with Powers, traced the horse to Bonsor, the trade was cancelled and Powers took back the horse and offered to settle the whole matter for $150 (exhibit No. 9). The horse had been clearly identified, as attested by several witnesses, including Walker himself. The offer being accepted Powers gave his post-dated cheque for that amount, but the payment of the same was stopped by him at the bank. When

the cheque was presented there were no funds. In the meantime he had sought legal advice and decided to contest the claim.

The defendant testified that when he traded "Mark" with Walker the latter told him the horse was free from any lien. This was a false statement on Walker's part and one from which the defendant cannot seek comfort or relief; because the moment he knew he was dealing with a settler under the Board, he was put upon his inquiry and he could easily ascertain the truth of the statement by asking the Board. *Caveat emptor.* He thus bought at his own risk and peril.

The Parliament of Canada when legislating with respect to its property,—under subsection 1 of section 91 of the B.N.A. Act—is undoubtedly legislating within its competence and jurisdiction. But even if there were any conflict between the Federal and Provincial jurisdiction in this case, which I do not find, the question must be regarded as disposed of by numerous decisions of the Judicial Committee of the Privy Council, the most recent one there being in the case of *McColl* v. *C.P.R. Co.* (1) in which the judgment of their Lordships was pronounced by the Right Honourable Mr. Justice Duff. His succinct statement of the rule of construction governing such cases may be quoted with advantage. Speaking particularly of the Dominion and Provincial enactments in question in that case, he says:—

The enactments deal with different subject matter, although the circumstances of a particular case may bring it within the scope of both enactments, in which case, if a conflict arises, it is the Dominion legislation which prevails.

The security obtained by the Board, on the 17th December, 1920, (exhibit No. 3) under the document called "purchasing order" complies with the requirement of the Act and is within the ambit of section 32 thereof, as amended and repealed by 10-11 Geo. V, ch. 19, sec. 4 (1920), whereby, moreover, the forms of any agreement or of any document made thereunder is left to be settled by the Board itself, and exhibit No. 3 is one of these forms.

(1) [1923] 1 A.C. 126, at p. 135.

1923
THE KING
v.
POWERS.
Audette J.

Then by section 34 of the Act, 9-10 Geo. V, ch. 71, Parliament again, acting within its competence and jurisdiction, further enacted that, notwithstanding any provincial law to the contrary, while any liability remains unpaid upon the aggregate advances made to the settler, all his properties remain as security and cannot be alienated, unless the Board shall otherwise consent; and furthermore that no sale, barter, or other transactions by the settler, while the prices are unsatisfied, can be effective as against the Board.

Moreover, by section 33 of the Act, in the absence of the Board's consent, livestock sold to a settler by the Board, so long as any part of the sale price remains unpaid, is exempt from the provisions of any provincial law requiring registration of deeds, judgments, bills of sale, etc., affecting the transfer or mortgaging of like property.

Indeed, the Provincial Legislature cannot *proprio vigore* take away or abridge any privilege, any right of the Dominion Crown emanating from the royal prerogative or resting upon any competent legislation of the Parliament of Canada. See per Anglin J—re *Gauthier* v. *The King* (1); *Regina* v. *Davidson* (2); *Flory* v. *Denny* (3).

The prayer of the information asks for the return of the gelding, or in the alternative for the value thereof and $100 damages.

There is no evidence upon the record of the state in which the gelding is to-day, and as to whether it is still in the hands of the defendant. The evidence of damages is meagre and unsatisfactory. In the choice of this alternative I must confess I felt some hesitation; but after consideration I have come to the conclusion that justice will be done between the parties if I give judgment against the defendant for the value of the horse—with interest thereon from the day the horse came in his possession. The value of the horse I will take at the value ascertained between the Crown and Walker in exhibit No. 3.

(1) [1918] 56 S.C.R. 176, at p. 194.
(2) [1861] 21 U.C.Q.B.R. 41.
(3) [1852] W. H. & G. 7 Ex. R. 581.

There were other incidental questions of minor importance raised at bar, but in the view I take of the case it is unnecessary to pass upon them.

Therefore, there will be judgment ordering and adjudging the plaintiff recover from the said defendant the sum of $160 with interest thereon from the 27th day of June, 1921, and costs.

Judgment accordingly.

Solicitors for plaintiff: *Messrs. Jones & Leonard.*
Solicitor for defendant: *Mr. W. Harold Barrum.*